

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP
address 76.23.68.243,

Defendant.

Case No. 1:13-cv-3707

Assigned to:
Hon. John W. Darrah
U.S. District Judge

**MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSES
AND AMENDED COUNTERCLAIM**

The anonymous person who pays the Internet bill associated with IP address 76.23.68.243, i.e., the “John Doe subscriber,” who plaintiff has accused of being the defendant in this action (hereafter “Doe”) by and through his¹ attorney, hereby applies to this honorable Court, per Fed. R. Civ. P. 15(a)(2), for leave to file the amended responsive pleading attached hereto as Exhibit 1. The proposed pleading contains an answer, as well as amended affirmative defenses, and an amended counterclaim.

Plaintiff’s counsel has previously agreed in principle to the filing of the attached, as a means to streamline consideration of the issues raised by defendant’s affirmative defenses and related counterclaim for declaratory relief.

¹ Per the Court’s order granting leave to proceed anonymously, Doe is not identified by name; masculine pronouns are adopted for convenience, but Doe is not necessarily male.

The Court had previously allowed defendant until February 14, 2014 to file amended affirmative defenses. ECF No. 27. After initially considering opposing the motion to dismiss the counterclaim on its own (notwithstanding the Court's striking of the affirmative defenses so they could be re-pled with greater specificity), defendant consulted with plaintiff about also re-pleading the counterclaim, so as to have it track with the new affirmative defenses. Defense counsel, in the opposition to the motion to dismiss the counterclaim, proposed a date of February 14, 2014 for amending the counterclaim (matching the earlier deadline set by the Court for pleading the affirmative defenses anew). ECF No. 28.

The attached proposed pleading was meant to be finalized and filed from Los Angeles on Friday February 14, 2014. After taking depositions in New Jersey last week, undersigned counsel was meant to return to the office on Thursday February 13, 2014. However, the latest in a series of severe winter storms resulted in undersigned's flight home being cancelled, with the first available return not coming until Saturday February 15, 2014. In the ensuing travel-related delays and mild confusion, which included having only intermittent phone and Internet access, getting the attached proposed pleading timely filed on February 14, 2014 was overlooked. Undersigned takes full responsibility for not meeting the Court's deadline, and begs the Court's forgiveness.

As noted, with the possible exception of an objection as to timing, a topic on which plaintiff's counsel was not able to respond immediately, it is not anticipated that there would be a substantive objection to the proposed amended responsive pleading. In any event, this application is being filed as promptly as possible, so as to forestall any possibility of prejudice to the plaintiff.

As for the changes effected by the proposed amended responsive pleadings:

(1) The answer itself is materially unchanged from defendant's original answer. (2) The factual allegations previously used as a basis for the counterclaim were re-alleged as part of the affirmative defenses, and each defense was beefed up to be consistent with *Twombly*. (3) The counterclaim is also modified, principally as it relates to references to the amended affirmative defenses.

In sum, defendant respectfully request that, for good cause shown, and consistent with the liberality as to amended pleadings called for by Fed. R. Civ. P. 15(a)(2), the Court allow defendant to file the responsive pleading attached hereto as Exhibit 1 within a week of entry of its order granting leave.

Respectfully submitted,

DATED: February 16, 2014

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

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Attorneys for Defendant John Doe ISP Subscriber

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing paper with the Clerk of the Court using ECF, which will send notification of such filing to all attorneys of record.

/s/ Morgan E. Pietz

Morgan E. Pietz

Respectfully submitted,

DATED: February 16, 2014